

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Bloomberg L.P.,)	
)	
Complainant,)	MB Docket No. 11-104
)	
v.)	
)	
Comcast Cable Communications, LLC,)	
)	
Defendant.)	

MOTION FOR EXPEDITED STAY OF COMCAST CABLE COMMUNICATIONS, LLC

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June 8, 2012

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EXHIBITS

Exhibit 1 Declaration of Michael Egan

Exhibit 2 Declaration of Mark A. Israel

Defendant.

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MB Docket No. 11-104

Comcast Cable Communications, LLC (“Comcast”), by its attorneys, hereby requests an expedited stay of the Bureau’s *Order* in this proceeding pending Commission action on the now dueling applications for review filed by Comcast and Bloomberg, L.P. (“Bloomberg”).

SUMMARY

This stay motion arises in an unusual, arguably unprecedented, setting. The Commission adopted the “news neighborhooding” condition (the “Condition”) as a “narrowly tailored” remedy in the Comcast-NBCUniversal transaction.¹ Comcast and Bloomberg disagreed about the implementation of this Condition and Bloomberg filed a complaint with the Media Bureau.

¹ *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, 26 FCC Rcd 4238, 4358, Appendix A § III.2 (2011) (“*Comcast-NBCUniversal Order*”).

The Media Bureau's Memorandum Opinion and Order dated May 2, 2012,² is the first decision implementing the Condition. Although Comcast disagrees with the Media Bureau's decision, and timely filed an Application for Review with the Commission, it has been working diligently to comply with the terms of the Media Bureau's *Order*.

Now, however, Bloomberg – as the “winner” before the Bureau – has filed its own Application for Review of the *Order* that has injected untenable confusion and uncertainty into Comcast's compliance efforts. In what can only be characterized as gross over-reaching, Bloomberg claims that it is entitled to be placed in not just one neighborhood, as decided by the Media Bureau, but also in *all* neighborhoods found in a given lineup – even if this means that Bloomberg TV (“BTV”) will appear in *three different locations* on the lineup (and displace multiple other networks in the process). Bloomberg also challenges the Media Bureau's definition of a “news channel” as arbitrary and unsupported – thereby calling into question where precisely “news neighborhoods” may or may not actually be found in a given lineup.

The combination of these challenges to the *Order* makes it enormously complicated and risky for Comcast to proceed with compliance on its original timetable and to deal with potential requests by other independent news networks. Simply put, Comcast now has no way of knowing what precisely it ultimately must do to comply with the Condition or whether its efforts to comply with the Bureau's *Order* (both with respect to BTV and with potential requests from other independent news networks) will be undermined by requiring it to engage in entirely different, multiple channel relocations once the Commission itself interprets the Condition.

² See *Bloomberg L.P. v. Comcast Cable Communications, LLC*, Memorandum Opinion and Order, MB Docket No. 11-104 (May 2, 2012) (“*Order*”).

All of this dictates that the Commission should stay the Bureau's *Order* pending Commission review on the competing Applications for Review, particularly because this is the Commission's first opportunity to render a decision regarding the Condition. This would be fully consistent with the Commission's actions in the *Tennis Channel* matter, where the Commission issued a stay on its own motion because there was substantial disagreement and lack of clarity regarding implementation of the first decision granting a program carriage complaint. To resolve that confusion, and to avoid the associated disruption to cable subscribers and other programming networks alike, the Commission properly granted a stay in the *Tennis Channel* case. A stay is warranted in this case for similar reasons.

In addition, because many of the troubling issues raised by Bloomberg's Application for Review can only be resolved by rapid action on this request for a stay, Comcast respectfully requests that the Commission act expeditiously on this Motion, to minimize the degree to which Comcast's implementation of the *Order* with respect to BTV will be so far along that a stay may have no practical impact on Comcast's placement of BTV. In this regard, to help expedite the process and explain its concerns, Comcast intends promptly to contact Commission staff and counsel for Bloomberg to discuss this matter and its urgency.

BACKGROUND

A. Procedural History

In the *Comcast-NBCUniversal Order*, the Commission declined to require Comcast "to affirmatively undertake neighborhooding" and rejected Bloomberg's proposals to define a "news neighborhood" as three news channels within five channel positions or to incorporate language

contemplating multiple “neighborhoods.”³ The Commission instead adopted a “narrowly tailored” Condition that “would only take effect if Comcast-NBCU undertook to neighborhood its news or business news channels.”⁴

In its Complaint, filed on June 13, 2011, Bloomberg argued that: (i) the Condition adopted by the Commission should apply not only to future channel lineups but also to channel lineups that existed at the time the Commission adopted the Condition; and, (ii) a “news neighborhood” should be defined as any grouping containing four news or business news networks within a cluster of five adjacent channel positions.⁵ It demanded that Comcast relocate BTV to any such news neighborhood on any headend containing a neighborhood in which BTV is not already located, within all Designated Market Areas (“DMAs”) specified as “top 35 DMAs” by Nielsen.⁶

The Media Bureau released its *Order* on May 2, 2012, granting in part Bloomberg’s Complaint. Specifically, the *Order* concluded that: (i) the Condition applies to the channel lineups existing on Comcast’s systems at the time the Commission adopted the *Comcast-NBCUniversal Order* as well as future channel lineups; (ii) four news or business news networks within any five adjacent channel positions constitutes a news neighborhood for purposes of the Condition; and, (iii) if a Comcast system has more than one news neighborhood, the Condition

³ *Comcast-NBCUniversal Order*, 26 FCC Rcd 4238, 4358, Appendix A § III.2.

⁴ *Id.*

⁵ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Complaint (“*Complaint*”) at 21-22.

⁶ *Id.* at 22.

obligates Comcast to carry BTV in at least one such neighborhood, but not in *all* news neighborhoods, in any particular neighborhood, or in one consolidated news neighborhood.⁷

Comcast filed an Application for Review on June 1, 2012. Comcast contends that the Bureau's interpretation of the Condition is inconsistent with the language and purpose of the Condition – as set forth in the *Comcast-NBCUniversal Order* – and the record that was before the Commission. On the same day, Comcast also filed a limited motion for an extension of time to implement the wide-ranging reengineering of its channel lineups required by the *Order*. As explained in that motion, Comcast is taking active steps to comply with the *Order* pending review, even though doing so will result in significant disruption to its customers and to other programming networks. For a minority of channel lineups affected by the *Order*, Comcast requested an additional 45 days to comply with the *Order*.

Later that day, however, Bloomberg filed its own Application for Review, challenging the Bureau's *Order* on multiple grounds. In particular, Bloomberg sought a determination that BTV be placed in *every* news neighborhood on Comcast's lineups. At the same time, Bloomberg also contended that Current TV, MHz Worldview, Link TV, and BBC World News should be excluded as news networks for purposes of establishing a neighborhood. As explained below, if accepted, Bloomberg's application would represent a substantial departure from the terms of the *Order* and would consequently threaten to upend Comcast's diligent efforts towards compliance, potentially forcing it to begin the burdensome process of relocation all over again.

⁷ See *Order* at 13.

B. Implications of Bloomberg’s Application for Review

As Comcast explained in its Application for Review, the Bureau erred in concluding that four news networks located within five adjacent channel positions constitutes a news neighborhood. Even so, Comcast has been engaging in good-faith efforts to comply with the *Order*, by creating a plan to change BTV’s channel position so that, for each lineup containing both BTV and at least one news neighborhood under the Bureau’s definition, BTV would be located in a news “neighborhood.”

Bloomberg’s Application for Review, however, has the potential to disrupt this compliance effort in at least three ways. *First*, Bloomberg has questioned the Bureau’s classification of Current TV, Link TV, MHz Worldview, and BBC World News as news networks. *Second*, it has argued that the Bureau’s requirement that BTV be placed in a news neighborhood on any BTV-carrying headend that contains a news neighborhood is insufficient, and that headends carrying BTV should be ordered to carry BTV in *every* news neighborhood. *Third*, Bloomberg has argued that its Complaint “dealt exclusively with the placement of its standard definition feed,” leaving it for the Commission to decide whether placement of BTV in an HD news neighborhood would satisfy the Condition, or whether, on a BTV-carrying headend, BTV must be placed in a Standard Definition (“SD”) news neighborhood in any lineup that contains such a neighborhood.

These three items must be settled by the Commission before Comcast can adopt an effective, stable approach to compliance, not just with respect to BTV, but more broadly with respect to its response to potential requests by other independent news networks.

1. Reclassification of News Networks as Non-News Networks Would Affect a Large Number of Lineups.

As explained in Comcast's May 22 filing, implementing the *Order* pursuant to the Media Bureau's classification⁸ of news networks would require Comcast to relocate BTV on approximately **390** lineups.⁹ Bloomberg, however, now argues that at least four networks – Current TV, Link TV, MHz Worldview, and BBC World News – should not be classified as news networks.¹⁰ If the Commission were to agree with Bloomberg, and decided to classify these four channels as non-news networks, it would have the following effect on Comcast's relocation obligations:

First, there are roughly **140** lineups serving approximately [REDACTED] subscribers where reclassification would “eliminate” one news neighborhood, but where a second news neighborhood would remain.¹¹ In many cases, it was Comcast's plan to move BTV into one of the “eliminated” neighborhoods. Accordingly, if Bloomberg were to prevail, these moves (and the attendant customer disruption and confusion) would be rendered pointless, and Comcast would be required to move BTV *again* into another, different news neighborhood. For this

⁸ Bloomberg's position underscores another serious issue with the Media Bureau's *Order*, i.e., that it contemplates a government agency's involvement in classifying content as a “news channel,” which interferes with the complex process of creating channel lineups.

⁹ See Letter from Arthur J. Burke, Esq., Davis Polk & Wardwell LLP, Counsel for Comcast Cable Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, & Exhibit 1, MB Docket No. 11-104 (May 22, 2012).

¹⁰ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Bloomberg Application for Review (“*Bloomberg Application for Review*”) at 20-22.

¹¹ Declaration of Mark A. Israel, July 8, 2012 (“Israel Decl.”) (attached as Ex. 2) ¶¶ 23, Table A-2.

reason alone, the *Order* should be stayed until the Commission can provide greater clarity on the meaning of the Condition.¹²

Second, there are roughly **20** lineups in which BTV will no longer be part of a news neighborhood, whereas it was part of a neighborhood prior to the reclassification.¹³ In each of those lineups, however, at least one news “neighborhood” will remain and BTV will have to be relocated.¹⁴ Accordingly, if Bloomberg prevails, Comcast will have to add these lineups to its relocation efforts.

Third, pursuant to Bloomberg’s reclassification, on approximately **27** lineups, the last remaining neighborhood will be eliminated and Comcast’s efforts to relocate BTV into those now defunct neighborhoods to comply with the *Order* would be rendered unnecessary.¹⁵

Taken as a whole, a reclassification of Current TV, Link TV, MHz Worldview, and BBC World News will simultaneously increase the number of lineups on which Comcast will have to make adjustments – and, consequently, the number of customers affected – and significantly limit Comcast’s options for carrying out these adjustments in a way that is minimally disruptive to customers and programmers.

There would be similar disruption and uncertainty regarding Comcast’s efforts to accommodate any other requests by independent news networks. In the first instance, Comcast

¹² Bloomberg’s position that BTV be placed in *every* neighborhood further undermines the Bureau’s erroneous position that it need not address Comcast’s burden arguments because Comcast could always place BTV in a neighborhood above channel 100 where one exists, instead of placing it in a neighborhood below channel 100.

¹³ Ex. 2, Israel Decl. ¶ 25.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 24.

might implement major channel relocations to respond to a news neighborhooding request by networks that are defined as news channels under the *Order* only to be told by the Commission that the Bureau was wrong and these networks are not news channels after all. Moreover, Comcast might implement major channel relocations only to be told later that its placement of an independent news network into a news neighborhood, as defined by the Bureau *Order*, was unnecessary because the Commission decided that some of the networks in that “neighborhood” were not news networks in the first place and, thus, the grouping of networks did not constitute a news neighborhood after all.

2. Requiring BTV Be Placed in Every News Grouping Would Affect a Large Number of Lineups.

Bloomberg’s argument that BTV should be placed in *every* news neighborhood on all BTV-carrying lineups would impose even greater burdens upon Comcast. As stated above, using the news-network classifications adopted by the Media Bureau, Comcast is currently under the obligation to relocate BTV on about **390** different lineups. If the Commission were to adopt Bloomberg’s interpretation of the Condition and required Comcast to place BTV in *every* news neighborhood in all BTV-carrying lineups, the number of lineups requiring relocation would increase by approximately twenty-five percent to approximately **500** (involving a total of roughly **700** neighborhoods).¹⁶

This increase in the number of lineups involved in the implementation of a decision would not only increase the number of customers affected, but would also exacerbate the severity of the disruption experienced by those customers. As many lineups involve multiple

¹⁶ If the four news networks discussed above were reclassified as non-news networks, the number of lineups requiring relocation of BTV would be about **470**. Ex. 2, Israel Decl. ¶ 27 n.21.

news neighborhoods under the definition adopted by the Media Bureau, an interpretation of the Condition requiring BTV to be added to *every* news neighborhood on a lineup would increase the average number of networks that Comcast would be required to relocate on a given lineup, thereby increasing (1) the total number of channels affected, (2) the amount of customer disruption and confusion, and (3) the number of other programming networks adversely affected by the relocation. If Bloomberg were to prevail on its alternative demand, under which Comcast would be required to relocate BTV into each news neighborhood where Comcast carries CNBC, some relocations conducted pursuant to Comcast's compliance plan may likewise be rendered pointless, thereby forcing Comcast to perform additional disruptive relocations.

Again, these problems would be exacerbated in connection with requests by other independent news networks.

3. Requiring BTV Be Placed in at Least One SD Grouping Would Affect a Large Number of Lineups.

Bloomberg's contention that its Complaint "dealt exclusively with the placement of its standard definition feed" creates a number of additional uncertainties.¹⁷ If the Commission accepts this argument and requires Comcast, for all headends carrying BTV, to place BTV in at least one SD news neighborhood, this will have further disruptive implications, both in this case and in connection with potential requests by other independent news networks.

In approximately **140** out of the nearly **390** affected lineups, Comcast had planned to comply with the *Order* by placing BTV in a High Definition ("HD") news neighborhood. Placing BTV in an HD neighborhood (where available) is frequently the least disruptive option

¹⁷ *Bloomberg Application for Review* at 5 n.5.

available because HD channel lineups are typically in higher channel positions that are less settled from a consumer expectations perspective than their SD counterparts (especially those lineups below channel 100). In addition, CNBC is typically included in these HD neighborhoods – which is consistent with Bloomberg’s stated preference for being placed near CNBC. If Bloomberg’s position on HD/SD were accepted, then these relocation efforts would be rendered futile and Comcast would have to engage in additional disruptive channel moves in its lineup.¹⁸ Removing the HD neighborhood relocation option – a position which finds no support in the terms of the Condition or the *Order* – would also result in even more interference with Comcast’s channel lineups and compel additional relocation of networks in the 1-99 channel range, where disruption to subscribers and other programming networks is the most acute.¹⁹

* * *

Taken together, these three issues raised by Bloomberg undermine the effectiveness of Comcast’s efforts to comply with the *Order* in any sort of stable manner, both with respect to BTV and more generally. Absent a stay of the *Order*, Comcast would be required to engage in multiple rounds of channel relocations, both with respect to accommodating BTV and potentially other independent news networks who request relocation under the Condition, to satisfy the Condition if the Commission were to side with BTV on one or more of these questions.

¹⁸ If the four news networks discussed above were reclassified as non-news networks, the number of lineups requiring relocation of BTV would be approximately **149**. Ex. 2, Israel Decl. ¶ 28 n.22.

¹⁹ *Bloomberg L.P. v. Comcast Cable Communications, LLC*, MB Docket No. 11-104, Comcast Application for Review (“*Comcast Application for Review*”) at 15.

ARGUMENT

Comcast acknowledges that this situation does not precisely fit into the traditional test for a stay, which typically looks to: (1) petitioner’s likelihood of success on the merits; (2) irreparable injury to the petitioner; (3) harm to other parties; and, (4) the public interest. Nonetheless, the underlying purposes for granting a stay are also present here.²⁰ Bloomberg’s Application for Review has created substantial uncertainty and confusion regarding what may ultimately be required for compliance with the *Order* in this and other situations that may arise prior to Commission review. If the Commission were to adopt any part of Bloomberg’s application, it would cause substantial harm to Comcast absent a stay of the *Order* because many of its diligent efforts at compliance would have been pointless, as may any efforts in connection with other potential requests by independent news networks. In addition, Comcast’s subscribers and other programming networks would be doubly harmed, having been subjected to significant relocation disruptions pursuant to Comcast’s initial good faith (but futile) efforts to comply with the *Order* and then a subsequent round of additional relocations based on revised criteria from the Commission. By contrast, as evidenced by its own Application for Review of the *Order*, Bloomberg will not suffer any significant harm as a result of a stay. Thus, as explained below, the balance of harms and the public interest powerfully favor granting a stay in this matter pending Commission review.

²⁰ In this regard, if the Commission determined that a stay is warranted, it may wish to grant a stay on its own motion, as in *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Docket No. 10-204, Order, FCC 12-50, ¶ 5 (rel. May 14, 2012) (“*Tennis Channel Stay Order*”).

A. Comcast Is Likely to Prevail on the Merits.

As explained above, although the first step in the familiar stay analysis is to look to the petitioner's likelihood of success on the merits, Comcast believes that this situation is unique. Here, the compelling basis for a stay is derived from the confusion and uncertainty introduced by Bloomberg's Application for Review regarding what steps Comcast must take to comply with the Condition, which has never been interpreted by the Commission. Thus, as set forth above, Comcast has undertaken to comply with the terms of the *Order* but Bloomberg's application calls into question whether those plans will suffice. Similarly, any analogous efforts in response to requests by other independent news networks will also be at risk. In this unique situation, Comcast believes that the first step in the analysis is less relevant, especially as (1) the underlying foundation for the Condition was to minimize customer disruption, (2) there are competing applications for review, and (3) the Commission has not yet had the opportunity to weigh in on the requirements of the Condition. In other cases, the Commission has issued a stay or similarly delayed effectiveness of action where there were competing petitions for review and/or where doing so would avoid potential disruption to consumers and affected third parties.²¹

²¹ See *Tennis Channel Stay Order; Standard and Enhanced Disclosure Requirements*, MM Docket No. 00-168 & 00-44, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788, 15790-91 ¶ 4 (2011) (effectiveness of decision deferred by Commission's delay in transmission of OMB paperwork, "[b]ecause of the multiple petitions for reconsideration"); *International Settlement Rates*, IB Docket No. 96-261, Order, 13 FCC Rcd 9188, 9189 (1998) (effectiveness of newly adopted rate benchmarks stayed because they "could result in disruption of existing contractual agreements and cause confusion among customers . . ."); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Order, 11 FCC Rcd 856, 856 (1995) (rules applying to interexchange carriers stayed upon Commission finding that "a brief stay will be less disruptive to consumers and industry than allowing the requirements to take effect before the issues raised . . . are fully resolved"); *Paragon Cable*, 9 FCC Rcd 5750, 5750 (CSB 1994) (local rate orders stayed "pending the resolution of [an] Appeal on the merits, in order to minimize

In any event, even under the traditional criteria for a stay, Comcast believes that it satisfies this factor as well.²² Under established Commission precedent, Comcast need only demonstrate that “a serious legal question is presented,”²³ and that the issues raised by the petition “bear further analysis.”²⁴ That standard is clearly met. As Comcast explained in its Application, the Media Bureau erred in concluding that four news networks on five adjacent channel positions constitutes a news neighborhood. First, the Bureau itself acknowledges that its definition causes many lineups to include multiple news neighborhoods, a result that is inconsistent with the plain language and purpose of the Condition. Second, the Bureau’s definition of a news neighborhood not only finds no roots in, but directly *conflicts* with, the record in this proceeding. Finally, the Bureau’s construction and application of the Condition is not narrowly tailored and will result in significant customer disruption – an issue the Bureau simply ignored but one which the Commission expressly sought to minimize in drafting the Condition.²⁵

The Media Bureau also erred in concluding that the Condition applies to channel groupings that existed on Comcast’s systems at the time the Commission adopted the *Comcast-NBCUniversal Order*. As set forth in more detail in Comcast’s Application for Review, the subscriber confusion and ensure regulatory consistency in this important area, as the Commission has done in other similar cases”).

²² Comcast notes that it had no intention of filing for a stay prior to Bloomberg’s submission of its Application for Review, which called into question Comcast’s plans to comply with the *Order* as written and introduced substantial uncertainty into this proceeding.

²³ *Wash Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977).

²⁴ *Brunson Commc’ns, Inc. v. RCN Telecom Servs., Inc.*, 15 FCC Rcd. 12883 ¶ 5 (2000).

²⁵ *Comcast Application for Review* at 12-15; *Comcast-NBCUniversal Order* ¶ 118.

Bureau's finding that the Condition applies to existing channel groupings is contrary to: (i) the plain language of the Condition itself; (ii) the language and policies of the *Comcast-NBCUniversal Order*; and, (iii) the record on which the Condition was based, which influenced both Comcast's and the Commission's understanding of the Condition as accepted and adopted. For these reasons, the *Order* should be reversed.²⁶

B. Comcast Will Be Irreparably Harmed Absent A Stay.

If the Media Bureau's *Order* is allowed to go into effect while Bloomberg's Application for Review is pending, Comcast will suffer significant, immediate, and irreparable injury. The complexity and cost of implementing the *Order* is substantial, and the negative effects of the decision on Comcast's business will be large and impossible to undo.²⁷ Comcast was willing to accept those negative effects pending action on its Application for Review given that the Bureau's *Order* at least provided some clear and stable guidance pending action by the Commission. Bloomberg's Application for Review magnifies the complexity and costs of compliance, however, because it makes it impossible for Comcast to know with any certainty

²⁶ *Comcast Application for Review* at 7-12; 47 C.F.R. § 1.115(b)(2)(i). Bloomberg's position that BTV should be placed in *every* news neighborhood on all BTV-carrying lineups underscores the error in Bloomberg's definition, adopted by the Media Bureau, of a news neighborhood as four news networks within five adjacent channel positions. The Commission adopted the Condition to address concerns that the Comcast-NBCU transaction would "increase[] Comcast's incentives to discriminate in favor of its affiliated programming." *Comcast-NBCUniversal Order* ¶ 118. By interpreting the Condition to require BTV to be placed in *every* neighborhood, even when there are multiple neighborhoods on a lineup, the Condition would be turned into a mechanism actively *favoring* BTV, instead of the non-discrimination provision that it is intended to be.

²⁷ *See, e.g., In the Matter of CBS Commc'ns Servs., Inc. & Centennial Wireless PCS License Corp.*, 13 FCC Rcd 4471, 4479-80 ¶ 19 (1998) ("[T]he threat of unrecoverable economic loss does qualify as irreparable harm."); *see also, e.g., Sottera, Inc. v. F.D.A.*, 627 F.3d 891, 898 (D.C. Cir. 2010).

what it must ultimately do to comply with the Condition. If Bloomberg were to prevail, many channel relocations would be rendered either unnecessary or futile, while many additional channel relocations would be required. The bottom line is that Comcast would have to start virtually from scratch in formulating and implementing a compliance plan, not just with respect to BTV but also with respect to any other requests from independent news networks received pending the Commission's review.

Every relocation that Comcast carries out will result in significant disruption, to both customers and programmers. It is precisely this kind of disruption that convinced the Commission to order a stay in the *Tennis Channel* case,²⁸ based upon "potential disruption to consumers and any affected third-party programmers." Bloomberg's Application for Review has exacerbated the potential disruption recognized by the Commission in several ways and highlights why a stay in this case is now essential.

First, as explained above, if the Commission were to agree with Bloomberg that Current TV, Link TV, MHz Worldview, and BBC World News should not be considered news networks, then the plan that Comcast intends to implement for complying with the Media Bureau's *Order* would be rendered insufficient and pointless: (1) Comcast would be required to relocate BTV in approximately **20** additional lineups, and, more importantly, (2) there would be about **140** lineups where Comcast may have relocated BTV to a news neighborhood, in full compliance with the *Order*, only to be told later that the news neighborhood that now contains BTV no

²⁸ *Tennis Channel Stay Order* ¶ 5.

longer qualifies as a neighborhood, and that BTV consequently must be relocated a second time.²⁹

Second, if, in full compliance with the *Order* as it now stands, Comcast proceeded to place BTV in one news neighborhood on all BTV-carrying lineups, but the Commission were to later decide that BTV should be placed in *every* news neighborhood as Bloomberg now advocates, **107** additional lineups would require further adjustment.³⁰

Third, Comcast currently plans to comply with the Bureau's *Order* by placing BTV in HD news neighborhoods in certain lineups. If the Commission were to side with Bloomberg and require placement of BTV in an SD news neighborhood for every lineup carrying BTV where such a neighborhood exists, Comcast would face a second round of relocation on as many as **140** lineups.³¹

In sum, as a result of filing its Application, Bloomberg has substantially increased the likelihood that Comcast would be compelled to make additional and contradictory changes to its channel lineups beyond the relocations it is currently planning to implement to comply with the *Order*. More channel relocations means more disruption and confusion suffered by Comcast's subscribers and other programming networks and, thus, a substantially larger irreparable injury to Comcast's business. Similar problems will arise in connection with potential requests by other independent news networks. The Commission should stay the *Order* pending review to ensure that, if Comcast is ultimately required to make changes to its channel lineups, it is only

²⁹ Ex. 2, Israel Decl. ¶¶ 23, 25.

³⁰ *Id.* at ¶¶ 21, 27.

³¹ *Id.* at ¶ 28.

required to do so once so as to minimize the harm to its subscribers and third-party programming networks.

C. BTV Would Not Be Harmed By A Stay.

While withholding a stay would impose severe and irreversible harms on Comcast, BTV will suffer no meaningful injury if a stay is granted. A stay will merely maintain the status quo pending Commission review.³² The status quo could not significantly injure BTV: BTV has been distributed by Comcast since 2006, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] BTV has reaped substantial benefits from this arrangement and cannot now plausibly assert that it will be harmed if it is held to the terms of its own voluntary agreement with Comcast for a brief period pending Commission review of the *Order*.

Bloomberg's filing of an Application for Review underscores the fact that it will not be significantly harmed by a brief stay: Bloomberg cannot reasonably contest the Media Bureau's interpretation of the Condition regarding where it should be placed and at the same time argue that it should be implemented at once. If expedited implementation were a priority to Bloomberg, it should not have filed an Application which creates significant uncertainty and impedes Comcast's effective and timely compliance with the *Order*.

³² *Nat'l Treasury Employees Union v. FLRA*, 712 F.2d 669, 671 (D.C. Cir. 1983) (explaining that the "sole purpose" of a stay "is to preserve the status quo while an appeal is in the offing or in progress").

D. The Public Interest Favors A Stay.

The public interest favors a stay because the *Order* will impose severe and unwarranted burdens on Comcast's customers and on unaffiliated networks that have no part in this dispute or situations involving requests by other independent news networks to be accommodated under the Condition. The practical difficulties in displacing BTV (and other independent news networks in analogous situations) will not merely inflict steep and unwarranted burdens upon Comcast, but will also likely be felt by millions of subscribers. When networks are displaced and viewers are unable to find them where they expect them to be located, they will be forced to spend time and energy to understand the change (including, potentially, by placing calls to customer service). Unnecessary confusion and frustration results. Other networks, displaced to make room for BTV (and others in similar situations), may also suffer damage to their business when customer confusion leads to decreased viewership, and, as a result, lower advertising revenue. The public interest suffers when such inconvenience, disruption, and expense is foisted upon the public on the basis of a decision that has not yet been reviewed by the Commission but is subject to Applications for Review from *both* sides.

The Commission is well aware of these concerns. In fact, it was precisely these issues that convinced the Commission to issue a stay in the *Tennis Channel* matter. There, the Commission acknowledged the risk that Comcast might have "to undertake multiple channel realignments to implement [a] channel placement remedy," and concluded that a stay would "preserve the status quo while the Commission has an adequate opportunity to examine the record . . . and it [would] avoid potential disruption to consumers and any affected third-party programmers in the event that the Commission subsequently reverses or modifies the ALJ's

remedy.”³³ Under those circumstances, which also involved a case of first impression before the Commission and also involved to some extent challenges by both parties, the Commission concluded that a stay would “serve the public interest.”³⁴ A stay in this case is warranted for exactly the same reasons.

Finally, the public interest favors a stay because “it is always in the public interest to prevent a violation of a party’s constitutional rights.”³⁵ This is particularly true in the context of First Amendment rights. As set forth in its Application for Review, the Media Bureau erroneously neglected to address Comcast’s First Amendment claims, and without a stay Comcast’s constitutional rights will be irretrievably lost. Yet Bloomberg now asks the Commission to restrict Comcast’s editorial discretion even further than did the Media Bureau: Bloomberg contends that Comcast should be compelled to carry Bloomberg TV in *every* neighborhood. The public interest strongly favors a stay to resolve these important constitutional questions.

CONCLUSION

For the foregoing reasons, Comcast requests that the Commission stay the effectiveness of the *Order* pending the conclusion of Commission review of the Bureau’s *Order*.

³³ *Tennis Channel Stay Order* ¶ 5.

³⁴ *Id.*

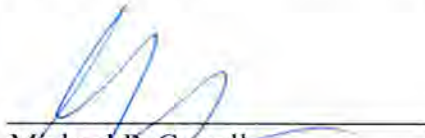
³⁵ *See Déjà Vu of Nashville, Inc. v. Metro. Gov’t of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001).

Respectfully submitted,

COMCAST CABLE COMMUNICATIONS, LLC

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Attorneys for Comcast Cable Communications, LLC


June 8, 2012

VERIFICATION

I, Arthur J. Burke, do hereby declare and state under penalty of perjury as follows:

1. I am a partner in the law firm of Davis Polk & Wardwell LLP, and
2. I have read the foregoing Motion for Expedited Stay of Comcast Cable Communications, LLC. To the best of my personal knowledge, information, and belief, the statements made in this Motion for Expedited Stay, other than those of which official notice can be taken, are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This Motion for Expedited Stay is not interposed for any improper purpose.

June 8, 2012



Arthur J. Burke

CERTIFICATE OF SERVICE

I, Arthur J. Burke, hereby certify that, on June 8, 2012, copies of the attached "Motion for Expedited Stay of Comcast Cable Communications, LLC" were served by hand delivery to the following:

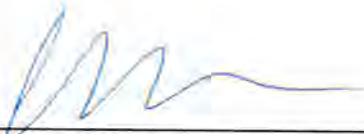
Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th street, S.W.
Room TW-A325
Washington, DC 20554

Stephen Diaz Gavin
Kevin J. Martin
Janet F. Moran
Patton Boggs LLP
2550 M. Street, N.W.
Washington, DC 20037

Robert Silver
Boies Schiller & Flexner LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022

In addition, a copy of the attached "Motion for Expedited Stay of Comcast Cable Communications, LLC" was served by email to:

Brendan Murray
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A373
Washington, DC 20554



Arthur J. Burke

Exhibit 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Bloomberg L.P.,)	
)	
Complainant,)	
)	
- against -)	MB Docket No. 11-104
)	
Comcast Cable Communications, LLC,)	
)	
Defendant.)	
)	

**DECLARATION OF MICHAEL EGAN
ON BEHALF OF COMCAST CABLE COMMUNICATIONS**

1. My name is Michael Egan. I have worked in the cable television industry for over 30 years, first in TV production, then in cable system ownership and corporate management, and subsequently, in management consulting. In this matter, I previously submitted a declaration dated July 27, 2011, which was included in Comcast's Answer of the same date and a supplemental declaration dated September 26, 2011, which was included in Comcast's Surreply of September 27, 2011.

2. I have been asked by counsel for Comcast to identify all of the news channels carried by Comcast on its cable systems in the Top 35 DMAs as of May 2012 so that the data could then be used to identify news neighborhoods in the lineups in those Comcast cable systems.

3. I requested and was provided with the Comcast channel lineups. While in my classification of call signs for the declaration I used channel lineups from Tribune Media

Services (“TMS”) so that I could also obtain the lineups for the other MSOs in these markets and then compare their news neighborhooding practices to those of Comcast, for this assignment I chose to use the lineups maintained by Comcast itself because I have found them to be more consistently accurate than those of TMS in the past. I also utilized the services of Compass-Lexecon to serve as a data gathering, storage, and analytical resource.

4. Every channel on the lineups is identified by a call sign. Starting with a list of 2,450 unique call signs within these Comcast cable systems, I categorized every call sign as a “news” or a “not news” channel and every news channel by language, “English,” “Spanish,” or “Other.” Only the English language news channels were subsequently used in determining news neighborhoods. While I performed most of the categorization work myself, I also employed the services of a cable television professional colleague who has worked in the business for 25 years. I reviewed his work in detail.

5. Those channels categorized as news channels were those that met the programming criteria delineated in footnote 292, subsection (iii), of section 122 of the FCC’s Comcast-NBCUniversal Order¹ and were: “focused on public affairs, business, or local news reporting and analysis during the hours from 6:00am through 4:00pm in the U.S. Eastern Time Zone.” We also incorporated prior FCC guidance that public affairs programming is, in general, that programming responsive to issues concerning the public welfare and interest. As a result, public affairs programming includes that “dealing with local, state, regional, national, or international issues or problems, including, but not limited to, talks, commentaries, discussions, speeches, editorials, political programs, documentaries, mini-documentaries, panels, roundtables

¹ *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. for Consent To Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56, 26 FCC Rcd 4238, 4287 ¶ 122 n.292 (2011) (the “Comcast-NBCUniversal Order” or the “Order”).

and vignettes, and extended coverage of public events or proceedings, such as local council meetings, congressional hearings and the like.”² In addition, we included the conclusions regarding news channels reached by the Media Bureau in this matter in its Memorandum Opinion and Order released on May 2, 2012.³

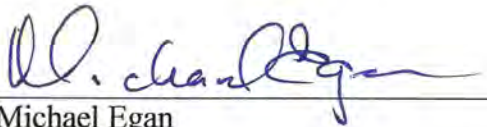
6. To determine the programming content of the channels, we used our combined cable and broadcasting industry knowledge, information gathered from the websites of TV channels, tvguide.com, titantv.com, IMDB.com, zaptoit.com, responses to specific questions given to Comcast’s counsel, clips of programs viewed on line, programs recorded on DVR, and the information we gathered in the preparation of the previous declaration and supplemental declaration. In those cases in which a channel offered genres in addition to news, a count of the hours of programming of each genre aired during the pertinent time period was done. If the majority of that airtime was news, public affairs, and business, the channel was categorized as a news channel.

7. While the opinions presented above are complete based on the information and documents made available to me, I reserve the right to expand, modify, or reduce my above findings and conclusions based on my review of any further disclosures made by any other expert, additional information or documentation provided in this matter, or on testimony and exhibits introduced at any further time.

² See *Revision of Programming & Commercialization Policies*, Report and Order, 98 FCC 2d 1076 (1984) (citing FCC 1980 Annual Programming Report, Form #303-A, October 1980).

³ See *In the Matter of Bloomberg L.P., Complainant v. Comcast Cable Communications, LLC, Defendant*, MEMORANDUM OPINION AND ORDER released by the Media Bureau on May 2, 2012, MD Docket No. 11 – 104, Section III. C., ¶¶ 14 – 16.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Michael Egan

Dated: June 8, 2012
Monroe, NY

Exhibit 2

**Exhibit Withheld Pursuant to
Request for Confidential Treatment**